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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/827,497

04/19/2004

David R. Hartman

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OWENS CORNING
2790 COLUMBUS ROAD
GRANVILLE, OH 43023

EXAMINER

JUSKA, CHERYL ANN

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/827,497

Applicant(s)

HARTMAN, DAVID R.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
- 4a) Of the above claim(s) 25-67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>08/04; 09/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group 1, claims 1-24, in the paper filed January 5, 2006, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 25-67 are hereby withdrawn as non-elected.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 21 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 is rejected for lack of antecedent basis of the term "said glass veil." Claim 18 from which claim 21 depends does not recite a "glass veil" but rather a "glass mat."

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 1 and 5-7 are rejected under 35 USC 102(b) as being anticipated by US 3,642,516 issued to Gasaway et al.

Gasaway discloses a primary carpet backing comprising a fabric of plastisol coated fiberglass yarns and a film coating thereon (abstract). Specifically, the carpet backing comprises a resin film reinforced with cross-laid fiberglass yarns (col. 2, lines 59-60). The fabric comprises two sets of yarns, which may be non-interlaced lying in two directions, including 90° to each other (col. 2, lines 60-61, col. 3, lines 1-8, and Figures 1 and 3). However, the yarn sets may also be at 45° to the length of the carpet backing (col. 3, lines 7-8). The resin film must be adherable but not compatible with the plastisol coating, such as acrylic acetate, acrylic, or vinyl acetate (col. 3, lines 50-64).

Gasaway teaches the resin film may be applied by “any of the various standard techniques” (col. 3, lines 59-60), which one skilled in the art would readily understand to include extrusion. Additionally, it is argued that the present limitation to an “extruded” film is descriptive of a method limitation in a product claim. As such, said limitation is only given weight to the extent that it produces a structurally different product. Extrusion merely produced a film layer on the fiberglass fabric. Gasaway explicitly teaches the resin must be film-forming (col. 3, line 65). Thus, claims 1 and 5-7 are anticipated by the cited Gasaway patent.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2, 3, 12, 13, 19, and 20 are rejected under 35 USC 103(a) as being unpatentable over the cited Gasaway invention.

While Gasaway fails to explicitly teach the film is a nylon film, it would have been readily obvious to one skilled in the art to substitute a nylon film for the disclosed acrylic film as long as said nylon film meets the requirements of said film (i.e., must be film-forming and adherable but not compatible with the plastisol coating). It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, claims 2, 3, 12, 13, 19, and 20 are rejected as being obvious over Gasaway.

8. Claims 4, 8-11, 14-18, and 21-24 are rejected under 35 USC 103(a) as being unpatentable over the cited Gasaway patent in view of US 6,479,125 issued to Irwin, Sr. and/or US 2003/0175475 issued to Higgins et al.

Gasaway fails to teach a second glass fabric layer. However, it is well known in the art to employ multilayered primary backings. For example, Irwin teaches multilayered composite primary backings comprising a first layer of a woven fabric, a nonwoven fabric, a film, or a composite thereof, a second layer of a leno weave fabric, an open weave fabric, a plastic net, or a film (abstract). The primary backing may also include a third intermediate layer of a woven or nonwoven fabric (col. 8, line 46-col. 9, line 7). Higgins teaches multilayered primary backings of woven and/or nonwoven fabrics which may have up to 5 layers (see Figures 4H to 4K). One such layer may be a fiberglass stabilizing layer comprising a fiberglass nonwoven formed by dry or wet-laid processes, needle-punching, or hydroentangling (section [0164]).

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Thus, it would have been readily obvious to one skilled in the art to employ more than one glass fabric in the Gasaway invention in order further enhance the stability of the tufted carpet. Note Irwin's teaching that dual-layer primary backings hold tufts more securely even without backcoating of the carpet (col. 2, line 66-col. 3, line 3). The additional glass fabric layer may be a layer like the first layer of Gasaway (i.e., non-interlaced sets of yarns) or it may be one similar to those disclosed by Irwin and/or Higgins (i.e., nonwoven fiberglass). Therefore, claims 4, 8-11, 14-18, and 21-24 also rejected.

Conclusion

9. The art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

U.S. EXAMINER